

(2) Removal from any new covered equipment or rendering illegible, by a manufacturer, distributor, retailer, or private labeler, of any label required under this part to be provided with such equipment;

(3) Failure to permit access to, or copying of records required to be supplied under the Act and this part, or failure to make reports or provide other information required to be supplied under the Act and this part;

(4) Advertisement of covered equipment, by a manufacturer, distributor, retailer, or private labeler, in a catalog from which the equipment may be purchased, without including in the catalog all information as required by § 431.82(b)(1), provided, however, that this shall not apply to an advertisement of covered equipment in a catalog if distribution of the catalog began before the effective date of the labeling rule applicable to that equipment;

(5) Failure of a manufacturer to supply at his expense a reasonable number of units of an electric motor to a test laboratory designated by the Secretary;

(6) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part, and to inspect the results of such testing; and

(7) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this part.

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than \$110 for each violation. Each violation of paragraphs (a)(1), (2), and (7) of this section shall constitute a separate violation with respect to each unit of covered equipment, and each day of noncompliance with paragraphs (a)(3) through (6) of this section shall constitute a separate violation.

(c) For purposes of this section:

(i) the term “new covered equipment” means covered equipment the title of which has not passed to a purchaser who buys such equipment for purposes other than:

(i) reselling such equipment, or
(ii) leasing such equipment for a period in excess of one year; and

(2) The term “knowingly” means:

(i) the having of actual knowledge, or
(ii) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§ 431.123 Compliance certification.

(a) *General.* Beginning 24 months after [insert date 30 days after publication in the FEDERAL REGISTER], a manufacturer or private labeler shall not distribute in commerce any basic model of an electric motor which is subject to an energy efficiency standard set forth in subpart C of this part unless it has submitted to the Department a Compliance Certification certifying, in accordance with the provisions of this section, that the basic model meets the requirements of the applicable standard. The representations in the Compliance Certification must be based upon the basic model’s energy efficiency as determined in accordance with the applicable requirements of subpart B of this part. This means, in part, that either:

(1) the representations as to the basic model must be based on use of a certification organization, or

(2) any testing of the basic model on which the representations are based must be conducted at an accredited laboratory.

(b) *Required contents.* (1) *General representations.* Each Compliance Certification must certify that:

(i) The nominal full load efficiency for each basic model of electric motor distributed is not less than the minimum nominal full load efficiency required for that motor by section § 431.42;

(ii) All required determinations on which the Compliance Certification is based were made in compliance with the applicable requirements prescribed in subpart B of this part;

(iii) All information reported in the Compliance Certification is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act and the

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regulations thereunder, and of 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(2) *Specific data.* (i) For each rating of electric motor (as the term "rating" is defined in the definition of basic model) which a manufacturer or private labeler distributes, the Compliance Certification must report the nominal full load efficiency, determined pursuant to §§ 431.23 and 431.24, of the least efficient basic model within that rating.

(ii) The Compliance Certification must identify the basic models on which actual testing has been performed to meet the requirements of section 431.24.

(iii) The format for a Compliance Certification is set forth in appendix A of this subpart.

(c) *Optional contents.* In any Compliance Certification, a manufacturer or private labeler may at its option request that DOE provide it with a unique Compliance Certification number ("CC number") for any brand name, trademark or other label name under which the manufacturer or private labeler distributes electric motors covered by the Certification. Such a Compliance Certification must also identify all other names, if any, under which the manufacturer or private labeler distributes electric motors, and to which the request does not apply.

(d) *Signature and submission.* A manufacturer or private labeler must submit the Compliance Certification either on its own behalf, signed by a corporate officer of the company, or through a third party (for example, a trade association or other authorized representative) acting on its behalf. Where a third party is used, the Compliance Certification must identify the official of the manufacturer or private labeler who authorized the third party to make representations on the company's behalf, and must be signed by a corporate official of the third party. The Compliance Certification must be submitted to the Department by certified mail, to Department of Energy, Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Forrestal Build-

ing, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

(e) *New basic models.* For electric motors, a Compliance Certification must be submitted for a new basic model only if the manufacturer or private labeler has not previously submitted to DOE a Compliance Certification, that meets the requirements of section 431.123, for a basic model that has the same rating as the new basic model, and that has a lower nominal full load efficiency than the new basic model.

(f) *Response to Compliance Certification; Compliance Certification Number (CC number).* (1) *DOE processing of Certification.* Promptly upon receipt of a Compliance Certification, the Department will determine whether the document contains all of the elements required by this section, and may, in its discretion, determine whether all or part of the information provided in the document is accurate. The Department will then advise the submitting party in writing either that the Compliance Certification does not satisfy the requirements of this section, in which case the document will be returned, or that the Compliance Certification satisfies this section. The Department will also advise the submitting party of the basis for its determination.

(2) *Issuance of CC number(s).* (i) Initial Compliance Certification. When DOE advises that the initial Compliance Certification submitted by or on behalf of a manufacturer or private labeler is acceptable, either:

(A) DOE will provide a single unique CC number, "CC____," to the manufacturer or private labeler, and such CC number shall be applicable to all electric motors distributed by the manufacturer or private labeler, or

(B) When required by paragraph (f)(2) of this section, DOE will provide more than one CC number to the manufacturer or private labeler.

(ii) Subsequent Compliance Certification. When DOE advises that any other Compliance Certification is acceptable, it will provide a unique CC number for any brand name, trademark or other name when required by paragraph (f)(3) of this section.

(iii) When DOE declines to provide a CC number as requested by a manufacturer or private labeler in accordance

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with § 431.123(c), DOE will advise the requester of the reasons for such refusal.

(3) *Issuance of two or more CC numbers.*

(i) DOE will provide a unique CC number for each brand name, trademark or other label name for which a manufacturer or private labeler requests such a number in accordance with § 431.123(c), except as follows. DOE will not provide a CC number for any brand name, trademark or other label name:

(A) For which DOE has previously provided a CC number, or

(B) That duplicates or overlaps with other names under which the manufacturer or private labeler sells electric motors.

(ii) Once DOE has provided a CC number for a particular name, that shall be the only CC number applicable to all electric motors distributed by the manufacturer or private labeler under that name.

(iii) If the Compliance Certification in which a manufacturer or private labeler requests a CC number is the initial Compliance Certification submitted by it or on its behalf, and it distributes electric motors not covered by the CC number(s) DOE provides in response to the request(s), DOE will also provide a unique CC number that shall be applicable to all of these other motors.

§ 431.124 Maintenance of records.

(a) The manufacturer of any electric motor subject to energy efficiency standards prescribed under section 342 of the Act must establish, maintain and retain records of the following: the underlying test data for all testing conducted under this part; the development, substantiation, application, and subsequent verification of any AEDM used under this part; and any written certification received from a certification program, including a certificate of conformity, relied on under the provisions of this part. Such records must be organized and indexed in a fashion which makes them readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by the Department directly).

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(b) All such records must be retained by the manufacturer for a period of two years from the date that production of the applicable basic model of electric motor has ceased. Records must be retained in a form allowing ready access to the Department upon request.

§ 431.125 Imported equipment.

(a) Pursuant to sections 331 and 345 of the Act, any person importing any covered equipment into the United States shall comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any covered equipment offered for importation in violation of the Act and of this part shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered equipment will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.126 Exported equipment.

Pursuant to sections 330 and 345 of the Act, this part shall not apply to any covered equipment if (a) such covered equipment is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such equipment is, in fact, distributed in commerce for use in the United States, and (b) such covered equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered equipment is intended for export.

§ 431.127 Enforcement.

(a) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular electric motor sold by a particular manufacturer or private labeler, which indicates that the electric motor may not be in compliance with the applicable energy efficiency standard, or upon undertaking to ascertain the accuracy of